

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 62

WEDNESDAY, 11 NOVEMBER 2009

1. Meeting of Council

The Council assembled at 4.00pm pursuant to order.

The President, Hon Barry House, took the Chair and read prayers.

2. Statement by President - Rescission of Vote - The Cliffe

The President made the following Statement -

Members

I have given some consideration to notice of motion No 15 titled *Rescission of Vote - The Cliffe* in the name of Hon Giz Watson. A motion to rescind a vote of this House pursuant to standing order 171 provides that an order, resolution, or vote of the Council may be rescinded, but not during the same session, unless 7 days' notice be given and an absolute majority of the whole number of Members vote in favour of its rescission.

The notice of motion certainly complies with the procedural requirements. However, the legal effect of rescinding a resolution that is subject to a statutory provision needs to be considered in each case, as to the terms of the statutory provision and the nature of any administrative action that had occurred consequent to the resolution. A motion for rescission would be out of order if it sought to circumvent a statutory process.

I note that *Erskine May* suggests that:

The reasons why motions for open rescission are so rare and the rules of procedure carefully guard against the indirect rescission of votes, is that both Houses instinctively realize that Parliamentary government requires that the majority to abide by decision regularly come to, however unexpected, and that it is unfair to resort to methods, whether direct or indirect, to reverse such a decision.

By way of background on 29 May 2008, the Legislative Council received a message from the Legislative Assembly notifying that it had agreed to a resolution that pursuant to section 54(7) of the Heritage of Western Australia Act 1990, the property known as The Cliffe should be removed from the Register of Heritage Places, and requesting that the Council agree to a similar resolution.

After some debate, the Legislative Council passed the following motion of Hon Peter Collier on 29 May 2008:

That this House resolves pursuant to section 54(7) of the Heritage of Western Australia Act 1990 that the property known as The Cliffe, which was permanently entered into the Register of Heritage Places on 19 July 2005, notice of which appears in the Government Gazette of 29 July 2005 at page 3365, should be removed from the Register of Heritage Places.

On 10 June 2008 a message was sent from the Legislative Council to the Legislative Assembly notifying the Legislative Assembly that the Legislative Council had concurred with the Legislative Assembly's resolution. The 37th Parliament prorogued on 7 August 2008. The 38th Parliament commenced on 6 November 2008.

In the Government Gazette dated 22 August 2008, the following notice was published:

HERITAGE OF WESTERN AUSTRALIA ACT 1990

REMOVAL OF AN ENTRY IN THE REGISTER OF HERITAGE PLACES

In accordance with the requirements of Section 54 (5) of the Heritage of Western Australia Act 1990 (the Act) the Heritage Council gives notice that the entry in the Register on a permanent basis in relation to the Place being "The Cliffe" at 25 Bindaring Parade, Peppermint Grove, has been removed from the Register pursuant to a direction from the Minister under Section 54(1) of the Act.

The reason for the removal is that both houses of the Western Australian Parliament passed a resolution to remove the Place from the Register under section 54(7) of the Act.

The entry in the Register has been removed in relation to that parcel of land comprising of Lots 28 and 29 on Diagram 8903 and Lots 25, 26 and 27 on Plan 3783 being the whole of the land contained in Certificate of Title Volume 1265 Folio 334.

(sgd) IAN BAXTER, Director,

Office of the Heritage Council of W.A.

108 Adelaide Terrace,

East Perth WA 6004.

After the Honourable member gave notice of motion to rescind the resolution on 8 April 2009 the Clerk sought a legal opinion as to the legal effect of rescinding the resolution. The opinion concluded by stating

"While the matter is not the subject of judicial authority which directly addresses the point, in my opinion the above considerations combine to lead to a conclusion that the rescission of the Legislative Council's resolution would not mean that it was taken never to have been made for the purposes of s. 54(7) of the Act. In my opinion the rescission of the Legislative Council's resolution after The Cliffe has been removed from the Register (ie after the effect of the resolution was spent) would not have any legal effect. That is not to say that the rescission of the resolution prior to the removal of a place from the Register would not prevent its removal. However, in this case The Cliffe was removed from the Register at a time after the Council had made the relevant resolution and, having been so removed, could only be re-entered on the Register by following the procedure for entry provided for in s. 49 of the Act."

I therefore rule the notice of motion out of order and instruct the Clerk to remove the notice of motion from the Notice Paper.

In the circumstances, however, as considerable time has elapsed, I will allow the Member to substitute an alternative motion if she wishes, in the same relative place on the Notice Paper, so she doesn't lose her right of position, in terms of when the motion will be debated.

Substitute Notice of Motion

Pursuant to the foregoing ruling by the President, Hon Giz Watson: To move on the next day of sitting -

That this House consider as a matter of grave concern the information withheld from the House when considering the removal of *The Cliffe* from the Register of Heritage Places.

3. Ministerial Statement - Dirk Hartog Island National Park

The Minister for Environment made a Ministerial Statement with respect to the creation of a new national park on Dirk Hartog Island.

Ordered - That consideration of the Ministerial Statement be made an Order of the Day for the next sitting.

4. Papers

The following Papers were laid on the Table by -

President

Auditor General's Papers -

Audit Results Report (2008 - 2009) - Assurance Audits (Report No. 13) (November 2009) 1503

Fourth Public Sector Performance Report (2009) (Report No. 12) (November 2009) 1504

Reports -

Public Sector Standards Commissioner, Office of the [OPSSC] - Parliamentary Series
Report Six - Audit of Senior Recruitment Processes in the Western Australian
Public Sector 1505

Leader of the House

Annual Reports -

Electoral Commission (Political Finance) (2007 - 2008) (Date received 27/10/2009) 1506

Minister for Environment on behalf of the Parliamentary Secretary representing the Minister for Regional Development

Reports -

India Visit (5 - 11 September 2009) 1507

Parliamentary Secretary representing the Attorney General on behalf of the Parliamentary Secretary representing the Treasurer

Annual Reports -

Technology and Industry Advisory Council (2008-2009) (Date received 10/11/2009)) 1508

5. Partial Revocation of State Forest Nos 2, 12, 16, 38, 55 and 57

Minister for Environment: To move on the next day of sitting -

That the proposal for the partial revocation of State Forest Nos 2, 12, 16, 38, 55 and 57 laid on the Table of the Legislative Council on Tuesday, 10 November 2009 be carried out, and invite the Legislative Assembly to agree to a similar resolution.

6. Partial Revocation of State Forest Nos 4 and 65

Minister for Environment: To move on the next day of sitting -

That the proposal for the partial revocation of State Forest Nos 4 and 65 laid on the Table of the Legislative Council on Tuesday, 10 November 2009 be carried out, and invite the Legislative Assembly to agree to a similar resolution.

7. Partial Revocation of State Forest Nos 22, 23 and 25

Minister for Environment: To move on the next day of sitting -

That the proposal for the partial revocation of State Forest Nos 22, 23 and 25 laid on the Table of the Legislative Council on Tuesday, 10 November 2009 be carried out, and invite the Legislative Assembly to agree to a similar resolution.

8. Partial Revocation of State Forest Nos 22 and 38

Minister for Environment: To move on the next day of sitting -

That the proposal for the partial revocation of State Forest Nos 22 and 38 laid on the Table of the Legislative Council on Tuesday, 10 November 2009 be carried out, and invite the Legislative Assembly to agree to a similar resolution.

9. Kimberley Liquefied Natural Gas Precinct

Motion No. 1 having been called, debate resumed on the motion of Hon Jon Ford as follows -

- (1) That this House expresses its concern at the comments made by the Premier to the Committee for Economic Development Australia Conference on Tuesday, 3 March 2009 in which he referred to a proposed LNG precinct to the north of Broome and stated -

“...we are proceeding in developing an LNG precinct to the north of Broome. That's not the spectacular part of the Kimberley coast, it's flat tableland, no people living within probably 30 or 40 kilometres of the area.That's important, we're trying to do that by negotiation, the timetable is the end of this month. If we can't do it by negotiation, the State will resume the land. I'll do that reluctantly, but we will do it. We will not hold up economic development and we will not deny the people of the Kimberley – and particularly the Aboriginal people – the opportunity from some economic independence and some economic security.”
- (2) This House calls on the Premier to -
 - (a) explain how he can claim to be negotiating in good faith when he put on public record that if he doesn't get a negotiated outcome he will resume the land to develop an LNG precinct to the north of Broome; and
 - (b) explain why he is presenting a veiled threat to indigenous people in respect of this matter and whether this is a sign of things to come.

10. Questions Without Notice

Questions without notice were taken.

11. Kimberley Liquefied Natural Gas Precinct

Debate resumed on the motion of Hon Jon Ford (cf item 9 above).

Interruption of Debate [SO 195].

12. Order of Business

Ordered - That Order of the Day No. 1, *Perth Parking Management Amendment Regulations (No. 2) 2009 - Disallowance*, be taken after Order of the Day No. 16, *Bookmakers Betting Levy Amendment Bill 2009*. (Leader of the House).

13. Bush Fires Amendment Bill 2009

The Order of the Day having been read for the third reading of this Bill.

The Minister for Energy representing the Minister for Police moved, That the Bill be now read a third time.

The Deputy President having reported that the Deputy Chairman of Committees had certified that the fair print of the Bill was in accordance with the Bill as agreed to in Committee, and reported.

Debate ensued.

Question - put and passed.

Bill read a third time and passed.

14. Criminal Code Amendment (Graffiti) Bill 2009

The Order of the Day having been read for the third reading of this Bill.

Debate resumed.

Question - put.

The House divided.

Ayes (27)

Hon Liz Behjat
Hon Helen Bullock
Hon Jim Chown
Hon Peter Collier
Hon Ed Dermer
Hon Wendy Duncan
Hon Phil Edman
Hon Sue Ellery
Hon Brian Ellis
Hon Donna Faragher
Hon Adele Farina
Hon Jock Ferguson
Hon Jon Ford
Hon Philip Gardiner

Hon Nick Goiran
Hon Nigel Hallett
Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien
Hon Sally Talbot
Hon Ken Travers
Hon Max Trenorden
Hon Ken Baston (*Teller*)

Noes (4)

Hon Lynn MacLaren
Hon Giz Watson

Hon Alison Xamon
Hon Robin Chapple (*Teller*)

Question thus passed.

Bill read a third time and passed.

15. First Home Owner Grant Amendment Bill 2009

The Order of the Day having been read for the consideration, in Committee, of Message No. 57 from the Legislative Assembly.

The Deputy President left the Chair.

In Committee

(Hon Michael Mischin in the Chair)

The Message was as follows -

Mr President

The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the *First Home Owner Grant Amendment Bill 2009*, with further related amendments, as set forth in the Schedule annexed, in which the Legislative Assembly seeks the Legislative Council's concurrence.

Hon G.A. Woodhams

Speaker

Legislative Assembly Chamber

Perth, 15 October 2009

Schedule showing the further amendments made by the Legislative Assembly in the First Home Owner Grant Amendment Bill 2009

No. 1

Clause 4

Page 3, line 8 — To delete “class 4 or class 5” and substitute:

class 6 or class 7

No. 2

Clause 4

Page 3, line 10 — To delete the line and substitute:

(a) 31 December 2009; or

No. 3

Clause 4

Page 3, after line 23 — To insert:

(da) in relation to a class 5 eligible transaction — 1 April 2011;
or

No. 4

Clause 4

Page 3, line 24 — To delete “class 5” and substitute:

class 7

No. 5

Clause 5

Page 4, line 18 — To delete “the cut-off date” and substitute:

30 September 2009

No. 6

Clause 5

Page 4, line 22 — To delete “the cut-off date” and substitute:

30 September 2009

No. 7

Clause 5

Page 5, line 9 — To insert after “(3)(b)(i)”:

or (4B)(b)(i)

No. 8

Clause 5

Page 5, line 10 — To delete “(3)(c)” and substitute:

(3)(c), (4B)(b)(ii), (4B)(c)

No. 9

Clause 5

Page 6, line 7 — To delete “class 4 or class 5” and substitute:

class 4, class 5, class 6 or class 7

No. 10

Clause 6

Page 6, line 24 — To delete “\$21 000.” and substitute:

\$21 000; or

- (e) in the case of a class 6 eligible transaction within the meaning of section 14B — \$10 500; or
- (f) in the case of a class 7 eligible transaction within the meaning of section 14B — \$14 000.

No. 11

Clause 7

Page 7, line 1 — To delete “class 4 or class 5” and substitute:

a class 4, class 5, class 6 or class 7

Clerk of the Legislative Assembly
Thursday, 15 October 2009

The Parliamentary Secretary representing the Treasurer moved, That the further amendments made by the Assembly be agreed to.

Debate ensued.

Question - put and passed.

The Deputy President resumed the Chair.

The Deputy Chairman reported, That the Committee had considered Message No. 57 from the Legislative Assembly, and had agreed to the further amendments made by the Assembly.

Report adopted.

Legislative Assembly acquainted accordingly.

16. Waste Avoidance and Resource Recovery Amendment Bill 2009

The Order of the Day having been read for the adjourned debate on the second reading of this Bill.

Debate resumed.

Want of Quorum

There not being a quorum present, the Deputy President gave instructions for the ringing of the Bells.
A quorum being formed, the debate continued.

Interruption of Debate [SO 61(b)].

17. Arson Legislation Amendment Bill 2009

The President reported the receipt of Message No. 64 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Transport moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Transport moved, That the Bill be now read a second time.

Debate stands adjourned and the Bill referred to the Standing Committee on Uniform Legislation and Statutes Review.

18. Acts Amendment (Weapons) Bill 2009

The President reported the receipt of Message No. 65 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Transport moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Transport moved, That the Bill be now read a second time.

Debate stands adjourned.

19. Special Adjournment

The Leader of the House moved, without notice -

That the House at its rising adjourn until Thursday, 12 November 2009 at 10.00am.

Question - put and passed.

20. Adjournment

The Leader of the House moved, That the House do now adjourn.

Debate ensued.

Question - put and passed.

The House adjourned at 10.38pm until Thursday, 12 November 2009 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Matt Benson-Lidholm and Hon Mia Davies.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council